

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

VINCENT MARK SANTANA,

Petitioner,

vs.

D. W. NEVEN, et al.,

Respondents.

Case No. 2:08-CV-00573-KJD-(LRL)

**ORDER**

Petitioner has paid the filing fee. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court has reviewed his Petition for a Writ of Habeas Corpus. It requires amendment.

Notice pleading is insufficient for habeas corpus. Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts “provides that the petition must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts supporting each ground.’” Mayle v. Felix, 545 U.S. 644, 655 (2005).

Petitioner was tried and convicted of failing to register as a sex offender. He appealed, and the Nevada Supreme Court affirmed. His state habeas corpus petition was unsuccessful.

In all grounds for relief, Petitioner argues that his trial counsel provided ineffective assistance. “[T]he right to counsel is the right to the effective assistance of counsel.” McMann v. Richardson, 397 U.S. 759, 771 & n.14 (1970). A petitioner claiming ineffective assistance of counsel must demonstrate (1) that the defense attorney’s representation “fell below an objective

1 standard of reasonableness,” Strickland v. Washington, 466 U.S. 668, 688 (1984), and (2) that the  
2 attorney’s deficient performance prejudiced the defendant such that “there is a reasonable  
3 probability that, but for counsel’s unprofessional errors, the result of the proceeding would have  
4 been different,” id. at 694. “[T]here is no reason for a court deciding an ineffective assistance claim  
5 to approach the inquiry in the same order or even to address both components of the inquiry if the  
6 defendant makes an insufficient showing on one.” Id. at 697.

7           In Ground 1, Petitioner alleges that the prosecutor asked prospective jurors whether  
8 they had children, to no objection by defense counsel. Petitioner argues that this question left the  
9 impression that Petitioner’s crime was against a child, when Petitioner’s crime was against an adult.  
10 Failure to register as a sex offender is a crime against the state, not against any particular person.  
11 Unless the trial went into the details of Petitioner’s underlying sexual offense, Petitioner’s  
12 allegations do not show how he was prejudiced by the lack of objection.

13           In Grounds 2 through 6, Petitioner alleges that he was homeless, thus unable to  
14 register, and that counsel was ineffective in several ways for failing to present to the jury evidence  
15 in support of this defense. Petitioner assumes that homelessness is a defense to the crime of failure  
16 to register as a sex offender. The Court cannot determine from the Petition whether that assumption  
17 is accurate. The statute itself is silent on the matter. See Nev. Rev. Stat. § 179D.441 et seq.  
18 Homelessness itself is not necessarily a bar to other legal rights and duties. For example, homeless  
19 people frequently commence actions in this court, and they use General Delivery as their mailing  
20 address.

21           To correct these defects, Petitioner needs to submit an amended petition in which he  
22 alleges how counsel’s inaction prejudiced him. Petitioner also needs to attach a copy of each  
23 written decision from the state courts, as instructed on page one of the Court’s petition form.

24           Petitioner has also submitted a Motion for Extension of Time (#4) to pay the filing  
25 fee, which the Court grants.

26           Petitioner has also submitted an Ex Parte Motion for Appointment of Counsel (#2).  
27 Whenever the Court determines that the interests of justice so require, counsel may be appointed to  
28 any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B).

1 “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of  
2 the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.”  
3 Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in  
4 federal habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider  
5 are not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt,  
6 718 F.2d at 954. After reviewing the Petition, the Court concludes that appointment of counsel is  
7 not warranted.

8 The Ex Parte Motion for Appointment of Counsel (#2) does not comply with the  
9 Court’s rules regarding the filing of ex parte motions, which are motions filed without notice to the  
10 adverse parties. See LR 7-5, 7-6. The Court recognizes that Petitioner used a form with “Ex Parte”  
11 in the title. If Petitioner uses such forms in the future, then he should cross out those words.

12 IT IS THEREFORE ORDERED that Petitioner’s Ex Parte Motion for Appointment  
13 of Counsel (#2) is **DENIED**.

14 IT IS FURTHER ORDERED that Petitioner’s Motion for Extension of Time (#4) is  
15 **GRANTED**.

16 IT IS FURTHER ORDERED that the Clerk of the Court shall file the Petition.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall send Petitioner a  
18 Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 form with instructions.  
19 Petitioner shall have thirty (30) days from the date that this Order is entered in which to file an  
20 amended petition to correct the noted deficiencies. Failure to comply with this Order will result in  
21 the dismissal of this action.

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1 IT IS FURTHER ORDERED that Plaintiff shall clearly title the amended petition as  
2 such by placing the word "AMENDED" immediately above "Petition for a Writ of Habeas Corpus  
3 Pursuant to 28 U.S.C. § 2254 by a Person in State Custody (NOT Sentenced to Death)" on page 1 in  
4 the caption, and Plaintiff shall place the case number, 2:08-CV-00573-KJD-(LRL), above the word  
5 "AMENDED."

6 DATED: June 10, 2008

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KENT J. DAWSON  
United States District Judge